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CONFLICT OF LAWS: LEGITIMACY: SUCCESSION.—What law should determine who are children under a statute of succession? According to *Wolf v. Gall*[1] it is the law of the situs of the realty.

In the principal case the paternal grandmother of children born out of wedlock, whose natural father was domiciled outside of California, died intestate possessed of real property in this state. The court decided that as the subsequent marriage of the parents of such children would work a legitimation by virtue of section 215 of the Civil Code, the marriage of the natural parents constituted a legitimation for the purpose of succession under section 1386 of the Civil Code. The court declared that while it is generally true that the laws of one state or country have no extra-territorial effect, on the other hand, when the status of a person is under consideration before the courts of this state in questions of succession, they will apply our own statutes in determining the status of the claimant to the succession; and if the claimant shows that by applying our law he is entitled to take as a legitimate child it is sufficient, and the fact that by the law of his own country he is not legitimate is immaterial.

While it is undisputed that the lex rei sitae governs the succession to or disposition of immovables,[2] the general rule is that the law of the father's domicile should be the proper law to determine legitimation for the purposes of succession to the father's property under a statute of the situs.[3] Thus where the act or event working a legitimation by the lex rei sitae does not constitute a legitimation by the law of the father's domicile, the children born out of wedlock are not generally considered legitimated for the purposes of inheriting realty as the legitimate children of the

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[1] (Dec. 9, 1916), 23 Cal. App. Dec. 910; rehearing denied, Feb. 7, 1917.

[2] Hall v. Gabbert (1904), 213 Ill. 208, 72 N. E. 806; Olmstead v. Olmstead (1909), 216 U. S. 386, 54 L. Ed. 530, 30 Sup. Ct. Rep. 292; Dicey Conflict of Laws (2d ed.), p. 504; Tiedeman, Real Property (2d ed.), § 644; 3 Washburn, Real Property (4th ed.), §32.

[3] Dayton v. Adkisson (1889), 45 N. J. Eq. 603, 17 Atl. 964, 14 Am. St. Rep. 763, 4 L. R. A. 488; De Wolf v. Middleton (1895), 18 R. I. 810, 26 Atl. 44, 31 Atl. 271, 31 L. R. A. 146; 1 Wharton, Conflict of Laws, (3d ed.), p. 552. See note in 65 L. R. A. 177. Contra: Sneed v. Ewing (1831), 5 J. J. Marsh, 460, 22 Am. Dec. 41.

In Blythe v. Ayres (1892), 96 Cal. 532, 31 Pac. 915, 19 L. R. A. 40, it was held that the law of California, the lex rei sitae, fixed the status of the child for the purposes of inheritance; but the decision appears to be on the ground that the father was domiciled here and it seems assumed throughout that if he had been domiciled in England, the law of England would have governed. See I Wharton, Conflict of Laws (3d ed.), p. 555 n. This case rested also on the succession of illegitimates under Cal. Civ. Code, § 1387.

The rule that a child not legitimate according to English law cannot inherit land in England does not operate against the general rule, for the lex rei sitae requires not only that the child be legitimate, but that he must have been actually born in wedlock in order to so inherit. Birtwhistle v. Vardill (1839), 7 Cl. & F. 895, 7 Eng. Rep. R. 1308; Doe v. Vardill (1839), West, 500, 9 Eng. Rep. R. 578.

father.[4] Conversely, where the act or event working a legitimation by the lex domicilii patris does not constitute a legitimation by the lex rei sitae, such children are generally considered legitimated for such inheritance.[5] This general rule is grounded on the principles that the lex domicilii should control the status or condition of a person and the relation in which he stands as to other persons[6] and that the legitimation of the child, being the creation of a status which is for most purposes beneficial to him, should be presumed in his favor whenever the lex domicilii patris will permit it.[7]

In order to apply this general rule that legitimation for succession as the child of the father should be determined by the lex domicilii patris, it is necessary in the present case to consider the nature of section 215 of the Civil Code. If it is a statute of descent, merely descriptive of a class of illegitimates who are thereby authorized to inherit the property, as is the nature of section 1387 of the Civil Code,[8] the fact that the father was domiciled outside the state will not deprive the children of any rights which the state may have given them in the estate of the intestate. But if it is to be construed purely as a statute creating a status of legitimacy between the illegitimate child and its father for all purposes, it would seem that the father should be domiciled in the state in order for it to operate for purposes beneficial to the child. The latter construction appears to be the proper one. The court in the principal case does not hesitate to read into the statute the wording of section 230, i. e. that it is a legitimation "for all purposes." In Blythe v. Ayres,[9] the court declared that section 215, conjoined with the principles of international law, would have changed the bastardy of the plaintiff in the world at large. Besides, the position of section 215 in the Code under the division "Persons," under the subdivision "Personal Relations," under the title "Parent and Child" indicates that this statute is to be considered merely as a statute fixing status.

F. H. M.

CORPORATION: STOCKHOLDERS' LIABILITY FOR TORTS.—Does section 322 of the Civil Code comprehend a stockholders' liability

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[4] Munro v. Saunders (1832), 6 Bligh N. S. 468, 5 Eng. Rep. R. 665; Eddie v. Eddie (1899), 8 N. D. 376, 79 N. W. 856, 73 Am. St. R. 765.

[5] Scott v. Key (1856), 11 La. Ann. 232; Miller v. Miller (1883), 91 N. Y. 315, 43 Am. R. 669; Bates v. Virolet (1898), 33 App. Div. 436, 53 N. Y. Supp. 893.

[6] Ross v. Ross (1880), 129 Mass. 243, 37 Am. R. 321; Shick v. Howe (1908), 137 Iowa, 249, 114 N. W. 916, 14 L. R. A. (N. S.) 980; Minor, Conflict of Laws (1901), § 68.

[7] 1 Wharton, Conflict of Laws (3d ed.), p. 556. See note in 65 L. R. A. 182.

[8] Estate of Magee (1883), 63 Cal. 414; In re Loyd's Estate (1915), 170 Cal. 85, 148 Pac. 522.

[9] Supra, n. 3.